

## CANADA TERMS AND CONDITIONS OF SALE OF GOODS

### 1. DEFINITIONS

In these Conditions:-

- (a) "Company" means the **Smiths Detection** company identified on the Quotation/Order.
- (b) "Goods" means any item of goods of whatsoever nature, which is sold by the Company to the Purchaser.
- (c) "liability whatsoever" shall include, without prejudice to the generality of the expression, liability in tort and in contract, including liability for consequential loss (including loss of revenue or profit) or damage of any kind howsoever caused or arising.
- (d) "ICC Incoterms" means the International Chamber of Commerce's Incoterms as published from time to time and "DDP" shall have the meanings given it by ICC Incoterms from time to time save where such meaning is inconsistent with the terms hereof.
- (e) "Losses" means losses, claims, causes of action, suits, damages, liabilities, expenses (including, without limitation, fees and disbursements of legal counsel and expenses of litigation) or other obligations.
- (f) "Operator" means the operator or user of Goods.
- (g) "Order" shall mean the agreement between the Company and the Purchaser (individually "Party" and collectively "the Parties") for the sale and purchase of the Goods/Services, referencing the Terms and Conditions of Sale herein and any other contemporaneous writing, signed by both Parties.
- (h) "Purchaser" means the company, firm or individual who has bought, or agreed to buy, the Goods and/or Services.
- (i) "Purchaser Delays" means any delay by Purchaser in performing any contractual obligations or any other circumstances for which Purchaser is responsible, including, without limitation, delays to attend testing (if required), provide adequate delivery instructions, take delivery, arrange shipment or import licences, or be available for installation and/or training.
- (j) "Quotation" means the quotation addressed to the Purchaser by the Company.
- (k) "Services" means all services, including maintenance and installation services, and operator training where applicable, provided under the Order.

### 2. GENERAL

- (a) The Quotation does not constitute an offer to supply any Goods or Services and no contract exists unless and until there has been an acceptance by the Company in writing of the Order.
- (b) The acceptance of the Order whether or not based on a Quotation from the Company shall, unless otherwise specifically agreed by the Company in writing, be deemed to be subject to the terms and conditions herein contained which shall apply to the exclusion of any other provisions contained in any other document issued by the Purchaser at any time before or after this contract and, in particular, but without prejudice to the generality of the foregoing, contained in any order by the Purchaser.
- (c) Unless otherwise stated in writing all descriptions, specifications, drawings and particulars of weights and dimensions submitted by the Company or otherwise contained in the Company's handbooks, manuals, catalogues, brochures, price lists and other published matter are approximate only and none of these form part of any contract or gives rise to any independent or collateral liability upon the part of the Company being intended merely to present a general idea of the Goods as described therein.
- (d) The performance figures in respect of the Goods included in the Company's specifications, product brochures and other published matter are indicative only and based on results obtained by the Company in tests and the Company accordingly warrants only that the Goods met or demonstrated those performance standards or characteristics which are specifically attributed thereto in such specifications made available by the Company to the Purchaser and the Company gives no warranty that the Goods will be suitable for any particular use to which the Purchaser may put them or how they will perform in such use or application.
- (e) The Purchaser shall ensure that any of its employees, agents or representatives or other person to whom the Purchaser shall provide the Goods shall receive a copy of any operator manual in respect of the Goods which is available from the Company.

### 3. PRICE

- (a) The price of the Goods is that current as of the date of the Quotation and valid for a period of 30 days thereafter, unless stated to the contrary by the Company on the face of the Quotation or otherwise in writing.
- (b) The Goods shall be those specified in the Order as confirmed by the Company's acceptance in writing and the Company reserves the right to increase the price if the Purchaser requests an alteration to the Order or requests any modification to the Goods and/or Services.
- (c) The price of the Goods includes the cost of basic packaging.
- (d) The price of the Goods excludes HST, GST, PST, QST and any other applicable taxes and duties the cost of which shall be determined at the date of the invoice and shall be payable by the Purchaser.
- (e) The cost of any special packaging shall be determined at the date of invoice and shall be payable by the Purchaser.
- (f) The Purchaser shall not be entitled to make any deduction from the price of the Goods in respect of any set-off or counter-claim unless both the validity and the amount thereof have been expressly admitted by the Company in writing.

### 4. PAYMENT

- (a) In respect of Goods, the Company shall invoice the Customer on or at any time after shipment from Company's facility, unless otherwise agreed in writing by the parties.
- (b) The Purchaser shall, except where other payment arrangements are specifically agreed in writing, make full payment in CAD Dollars for the Goods not later than 30 days after the date of the invoice relating thereto or, if earlier, on the day which a receiver of the Purchaser's undertaking is appointed or upon which any act is done or event occurs which is related to the insolvency of the Purchaser. If payment for the Goods is not made when due the Company may charge interest thereon at the rate of one and a half per cent (1.5%) per month or the maximum rate allowable by law. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Purchaser shall pay interest together with the overdue amount.
- (c) Time for payment shall be of the essence.
- (d) Any failure to pay the price or any part thereof and other moneys payable by the Purchaser hereunder when due will also entitle the Company to refuse to make delivery of any further consignment of Goods under this contract or goods under any other contract with the Purchaser and without incurring any liability whatsoever to the Purchaser for any delay.
- (e) The Company shall retain a first, perfected security interest in the Equipment until the Purchaser has made full payment for the Equipment. Until the Purchaser has made full payment for the Equipment, the Purchaser shall keep the Equipment free from any lien, charge, or similar encumbrance and shall not resell the Equipment. Until the Purchaser has made full payment for the Equipment, the Company shall have the right to retake possession of the Equipment and for that purpose, with or without notice to the Purchaser, to enter any premises occupied by the Purchaser in which the Equipment may be. Such retaking of possession shall not relieve the Purchaser from its obligation to purchase the Equipment by paying the full price thereof and shall not prejudice any rights of the Company including any right it may have to accept a repudiation by the Purchaser of the contract relating to the Equipment.
- (f) In addition to the foregoing and any additional lien to which the Company may otherwise be entitled, the Company shall, in the event of the Purchaser being insolvent or failing to pay the purchase price due under any other contract with the Company, be entitled to a general lien on all goods of the Purchaser in the Company's possession for the unpaid price of the Goods sold and delivered to the Purchaser by the Company under this or any other contract. In the case of repairs or overhauls performed pursuant to this Order, the Purchaser hereby grants to the Company a perfected security interest in all Equipment retained in possession of Smiths upon which any repair or overhaul services have been performed by the Company. To the extent that the Company maintains possession of Equipment under repair, the Purchaser agrees that the Company is a secured creditor of the Purchaser and has all the rights of a secured creditor. Any such liens or security interests granted herein may not be subordinated by the Purchaser.
- (g) No defect in the Goods or Services shall operate to interfere with the terms of payment.
- (h) The Company reserves the right to change the terms of payment whenever it reasonably appears that Purchaser's financial condition requires such changes, and may demand assurance of the Purchaser's ability to pay whenever it reasonably appears that such ability is in doubt. Such demand shall be in writing and the Company may, upon making such demand, stop production and/or suspend shipments hereunder without any liability whatsoever to the Purchaser.

### 5. TRANSFER OF RISK AND PROPERTY

- (a) All risk and title in and to the Goods shall transfer to the Purchaser in accordance with the stated INCOTERM of the Quotation/Order.
- (b) Any Purchaser Delays shall result in immediate transfer of the risk of loss to the Purchaser and Purchaser shall be responsible for the procurement of insurance, if so desired, on the Goods.
- (c) The Company shall have no liability for damage of the Goods unless notice of a claim is received by the Company within 3 days of the Goods being received by the Purchaser.

### 6. DELIVERY

- (a) Unless otherwise agreed in writing all shipments of Goods made by Smiths shall be DDP Purchaser's named place of delivery (ICC Incoterms 2010).
- (b) Unless otherwise stated in writing any time or date for the delivery of Goods shall run from the date on which acceptance of the Order is communicated to the Purchaser. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence.
- (c) Delivery and the Purchaser's acceptance of the Goods shall be deemed to have taken place at the earliest point in time at which risk passes to the Purchaser under the ICC Incoterms. Signature of any delivery note by any agent, employee or representative of the Purchaser or by any independent carrier shall be conclusive proof of the delivery and the Purchaser's acceptance of the Goods. Notwithstanding such delivery, the Company shall have a general and particular lien over the Equipment for all claims by the Company against the Purchaser and all monies owing by the Purchaser to the Company howsoever arising.
- (d) Without prejudice to any rights of the Company hereunder, if the Purchaser shall fail to give on or before the agreed date of delivery all instructions reasonably required by the Company and all necessary documents, licences, consents and authorities (which the Purchaser is

## CANADA TERMS AND CONDITIONS OF SALE OF GOODS

- obliged under these terms and conditions or by law to obtain) for forwarding the Goods or if there is any other Purchaser Delay, the Purchaser shall pay to the Company all storage and insurance costs and any other out of pocket expenses incurred arising from such delay.
- (e) The Purchaser shall be obliged to take delivery of the Goods and/or Services when they are delivered or tendered for delivery in accordance with the Order and title and risk of loss shall transfer to Purchaser upon delivery pursuant to the delivery terms in Section 6(a) above. Where the Purchaser refuses or is unable (for any reason) to accept delivery of the Goods and/or Services or if there is any other Purchaser Delay, the Company shall have the right (without prejudice to its other rights) to invoice the Purchaser in respect thereof (payment to be made within 30 days of the invoice date) and the Goods and/or Services shall be deemed Delivered. The Company shall be entitled to invoice the Purchaser for the reasonable costs of re-delivery, storage, insurance and all other handling costs arising directly or indirectly therefrom and the Purchaser shall make payment to the Company within 30 days of the invoice date.
- (f) Purchaser Delays shall be considered excusable delays for the Company and result in a corresponding automatic extension of any agreed upon time for the performance of the Company's obligations under this Order. The Company shall not be liable to the Purchaser under any circumstances whatsoever for any penalty, damage or loss resulting directly or indirectly from any Purchaser Delays.
- (g) The Company shall be entitled to make partial deliveries by instalments and (where the Company has agreed to be responsible for delivery of the Goods to the Customer) to determine the route and manner of delivery of the Goods and shall be deemed to have the Purchaser's authority to make such contract with any carrier as the Company may deem reasonable. If the route involves sea transit the Company shall not be obliged to give the Purchaser any notice.
- (h) The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Where delivery of the Goods is made in instalments, each instalment shall be construed as constituting a separate agreement to which all the provisions of these conditions shall (with any necessary alterations) apply. Any delay in or defect in an instalment shall not entitle the Purchaser to cancel any other instalment.
- (i) In the event of any delay in delivery or installation whether attributable to cause outside the Company's control or not the Company shall be under no liability whatsoever to the Purchaser.
- 7. WARRANTY**
- (a) The Company warrants that the Goods supplied by it against defective materials and defective workmanship for a period of twelve months from the date of delivery or deemed delivery (see Section 6(e) above) provided the Purchaser notifies the Company in writing of any alleged defect within 30 days of its discovery. Under this product warranty the Company will, in its sole discretion, either at the Customer's premises or on the Purchaser returning the Equipment carriage paid to such place as the Company shall direct, make good any defect by repair or replacement within a reasonable period of time if, in the opinion of the Company, the defect constitutes a breach of this product warranty. Purchaser shall not have the right to engage a third party to complete repairs or provide replacement parts.
- (b) Any parts so repaired or replaced free of charge under this warranty will be subject to a warranty on the same terms as this warranty for the remaining initial warranty period. Electronic components and other parts or components not manufactured by the Company shall be subject only to such warranty (if any) as shall be given by the manufacturer or supplier thereof to the Company.
- (c) No claim will be met by the Company under this product warranty arising out of fair wear and tear or if the Goods have been incorrectly fitted, misused, kept in storage or immobilised for one year or more, subjected to neglect or abnormal conditions or involved in any accident or any attempt to repair, replace or modify has been made without the authorization of the Company or if they have been in any way dealt with contrary to any oral or written instructions issued by the Company.
- (d) Equipment and parts that are consumed in normal operation are not covered by this product warranty.
- (e) Should these Conditions apply to a consumer transaction this Product Warranty shall not affect the statutory rights of the Purchaser.
- 8. LIMITATION OF LIABILITY**
- (a) The Purchaser is relying on its own skill and judgement in relation to the Goods supplied under this contract and the Company accepts no liability whatsoever for any knowledge it or its employees, agents or representatives may possess as to the purpose for which the Goods are supplied.
- (b) The Purchaser acknowledges and agrees that:
- (i) The Goods are intended to be used as security screening equipment, in order to assist in the detection of illegal and/or hazardous materials;
- (ii) The degree of success with which the Goods will fulfil their intended use is dependent on numerous factors, including without limitation the sophistication of efforts to conceal illegal and/or hazardous materials, the chemical identity and quantity of such materials, the skill, diligence and qualifications of the Operator (where applicable) and environmental conditions; and
- (iii) No security screening equipment is capable of detecting every threat, and neither the Purchaser nor the Operator has any expectation that the Goods are capable of detecting, or that they will detect, all illegal and/or hazardous materials (this being the case whether the Goods are operated with or without Operator supervision, and regardless of the degree of diligence with which services of the Company, if any, are or have been performed).
- (c) The Company makes no guaranty or warranty as to the results that will be achieved through the use of the Goods and it is agreed that the sole responsibility for such results shall be borne by Purchaser.
- (d) **The remedies provided in Section 7 above shall be the Purchaser's sole remedy** in respect of the Goods and all further remedies are hereby expressly excluded, to the extent permitted by the applicable law.
- (e) **Nothing in these terms shall exclude or limit the Company's liability for: (i) death or personal injury resulting from the Company's negligence; (ii) fraud or fraudulent misrepresentation; (iii) breach of the terms implied by Section 12 of the Sale of Goods Act 1979; or (iv) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.**
- (f) **Subject to Section 8(e), neither the Company nor any of its affiliates shall be under any liability whatsoever to the Purchaser whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any indirect or consequential loss, loss of profit, loss of revenue, loss of goodwill, damages resulting from substitute procurement, loss of use, loss of data, loss of savings, loss of business, or failure or delay in performance, even if the Company or its affiliates have been advised of the possibility of any such damages and whether or not arising out of any liability of the Purchaser to any other person.**
- (g) **To the extent permitted by the applicable law, all conditions, warranties or other terms whether express or implied, statutory or otherwise are hereby expressly excluded.**
- (h) **The aggregate liability of the Company and its affiliates taken together in respect of the direct consequences and, in the event that the Company is not entitled (for any reason) to rely on the provisions of Section 8(d) above, the indirect consequences (including but without limitation loss of profit, revenue or goodwill and whether or not arising out of any liability of the Purchaser to any other person) resulting from any breach of contract, breach of a duty of care, statutory duty, product liability or otherwise howsoever suffered shall be limited to the lesser of: (i) the amount of the Order to which the Equipment relate or (ii) CAD\$500,000, and all conditions, warranties or other terms whether express or implied, statutory or otherwise, inconsistent with provisions of this Section are hereby expressly excluded.**
- (i) All, if any, statements, recommendations and advice given by the Company or the Company's servants or agents to the Purchaser or its servants or agents as to any matter relating to the Goods are given without responsibility and shall not give rise to any liability whatsoever on the part of the Company and the Purchaser hereby represents and warrants to the Company that no representation has been made to it by or on behalf of the Company that has in any way induced the Purchaser to enter into the contract with the Company.
- (j) Should these Conditions apply to a consumer transaction the Purchaser's statutory rights shall not be affected by this Section.
- 9. INDEMNITY**
- To the fullest extent permitted by applicable law, the Purchaser shall indemnify the Company and its affiliates from and against any and all liabilities, costs, expenses, damages and losses suffered or incurred by the Company arising out of or in connection with: (i) any claim made against the Company by a third party arising out of or in connection with the provision of Services or the supply of the Goods, to the extent that such a claim arises out of the breach of contract, breach of statutory duty, negligence, or failure or delay in performance by Purchaser, its employees, agents or subcontractors or (ii) any claim made against Company by a third party for death, personal injury or damage to property arising from the Purchaser's use and/or operation of the Goods.
- 10. EXPORT CONTROLS**
- (a) Where the supply of the Goods is subject to an application for a clearance and/or export licence from any relevant governmental authority, the Purchaser shall provide in a timely manner all documentation that the Company may reasonably request in order to apply to the relevant government authorities for the relevant permissions. Any delay by the relevant governmental authorities shall be considered as a Force Majeure Event in accordance with Section 21. In the event that any relevant government authority denies a clearance and/or export licence, the Company shall be entitled to terminate the Order at its sole discretion and without any liability whatsoever to the Purchaser.
- (b) The Purchaser acknowledges and agrees that the ultimate destination of the goods, technology, software, or services ("Products") sold hereunder is in Canada, unless otherwise stated in writing. The Purchaser shall not authorise or permit its employees, distributors, customers, brokers, freight forwarders, and/or agents to transfer, export, re-export, or import any of the Products to any person without complying with applicable export, import, and economic sanctions laws and regulations of the Canada, the UK, the United States, the European Union, or any other applicable jurisdictions. The Purchaser agrees to notify the Company immediately if the Purchaser or the end-user (if not the Purchaser and known) is specifically or otherwise effectively listed on any relevant government restricted or prohibited parties lists, including the Denied Persons List, Entity List, Sectoral Sanctions Identifications List, or Specially Designated Nationals List, or if the export privileges of the Purchaser or any relevant third party whom the Purchaser will involve in this transaction (including

## CANADA TERMS AND CONDITIONS OF SALE OF GOODS

its customer, if applicable), are otherwise denied, suspended or revoked in whole or in part by any relevant government authority. The Purchaser shall ensure that the Products are not used in relation to chemical, biological or nuclear weapons, or missiles capable of delivering such weapons. The Purchaser shall indemnify the Company against any and all direct, indirect and punitive damages, loss, costs (including attorney's fees and costs) and other liability arising from claims resulting from the Purchaser's breach of this clause.

### 11. COMPLIANCE WITH APPLICABLE LAW

The Purchaser shall comply with all applicable laws, treaties, regulations and codes of practice including, without limitation, the laws of Canada and shall be solely liable for obtaining and maintaining any licenses, permits, or approvals that may be required for the purchase and operation of the Equipment.

### 12. EXPORT AND IMPORT CONTROLS

- (c) In the case of export contracts, all import duties, charges and assessments shall be paid by the Purchaser and the obtaining of any necessary import licences in respect of the Equipment shall be the sole responsibility of the Purchaser and the Company shall be under no liability whatsoever to the Purchaser in respect of goods exported without the necessary import licences. The number and expiry date of any import licence shall be furnished to the Company with the shipping instructions at least one month prior to the delivery date. If the import licence expires before the Equipment has been made available the Purchaser shall be responsible for its renewal. The Company shall not be liable for any expense or loss caused by a Purchaser Delay in obtaining such licence or the renewal thereof.
- (d) When the export of the goods from the United States is subject to control, the contract will be conditional on the grant of an export licence. Applications for this licence will be made by the Company only when the Company is responsible for shipment. In all other cases the Company may assist the Purchaser in the procurement of such licence, but without being under any legal liability to do so.
- (e) The sale, resale or other disposition of the Equipment and any related technology or documentation are subject to the export control laws, regulations and orders of the United States and may be subject to the export and/or import control laws and regulations of other countries. The Purchaser agrees to comply with such laws, regulations and orders and shall not permit its employees, distributors, customers, brokers, freight forwarders, and/or agents to export or re-export any of the Equipment or any technology to any foreign person without complying with the applicable laws. To the fullest extent permitted by applicable law, the Purchaser shall defend, indemnify, and hold harmless the Company and its affiliates from and against any and all Losses and threatened Losses to the extent they result from a breach of this Section 12.

### 13. INTELLECTUAL PROPERTY RIGHTS

In the event of any claim being made or action being brought or threatened in respect of infringement of patents, copyright, trade marks, trade names, registered designs or any other intellectual property rights in respect of the Goods the Purchaser will make no admission in respect thereof and will notify the Company thereof forthwith and the Company shall be entitled to conduct all negotiations and take all necessary proceedings to dispute the same in its own name and in the name of the Purchaser and the conduct of all proceedings and negotiations shall be completely at the discretion of the Company. In such event the Purchaser will execute all such documents and do all such things and render all such assistance to the Company as the Company shall require. The Purchaser shall indemnify the Company against all costs, expenses, loss or damage incurred by the Company in respect of any claim being made or action brought or threatened as a result of work done in relation to the Goods by the Company in accordance with the Purchaser's specification or by the use to which the Goods are put by the Purchaser.

### 14. SUB-CONTRACTS

The Company reserves the right to sub-contract the performance of the contract or any part thereof.

### 15. ASSIGNMENT

The Purchaser shall not assign or transfer or purport to assign or transfer any contract to which these Conditions apply or the benefit thereof to any other person whatsoever without the consent of the Company.

### 16. SALES BY THE PURCHASER

The Purchaser undertakes to the Company that in respect of any sales of the Goods the Purchaser shall:

- (a) maintain a record of all such sales, including dates, prices, the names and addresses of the Purchaser's customers and product references and numbers and provide such details to the Company within 30 days of the Company's written request;
- (b) submit to the Company all complaints relating to the Goods together with all available evidence and other information relating thereto and forward to the Company for examination if necessary the Goods in respect of which complaints are made together with full identification of such Goods including product references and numbers. In the event of any dispute arising

between the Purchaser and any third party in relation to the quality or characteristics of any of the Goods sold by the Purchaser, the Purchaser shall inform the Company immediately of such dispute. The Purchaser shall not admit liability or do anything which might be construed as an admission of liability nor take any proceedings in respect of, or compromise, such dispute;

- (c) provide all customers with the specification and the operator manual and (where the customer requests) service manual relating to the relevant Goods and make it clear to customers that training and service support are available directly from the Company and pass on to the Company any resultant requests;
- (d) give effect to the Company's current Conditions of Sale when selling the Goods and shall not, and shall procure that none of its employees, agents or representatives shall make any representation or statement in relation to the goods which is not contained in the Company's current Conditions of Sale;
- (e) comply with all applicable export control laws, regulations and orders; and
- (f) indemnify the Company against all costs, expenses, loss or damage incurred by the Company as a result of any breach by the Purchaser or any of its employees, agents or representatives of any of the provisions of this Section 15.

### 17. CONFIDENTIALITY

- (a) The Parties agree that in the course of performance of the contract to which these Conditions apply, it may be necessary and desirable for them to exchange confidential information. For example, all updates, repairs, replacements, fixes, modifications, and other changes to the Goods shall be considered the Company's proprietary information. To accomplish this confidentiality, the parties agree as follows: Purchaser shall not disclose confidential information of the Company to any person outside its employ, except when authorized by the Company. Purchaser shall use the same level of care in preserving the confidential nature of the confidential information as it uses to protect its own confidential information but not less than reasonable care. Purchaser shall use the Goods only for the purpose contemplated by the parties at the time of sale, and for no other purpose. Purchaser shall not: (i) reverse engineer, disassemble (except to the extent applicable laws specifically prohibit such restriction), or decompile the Goods or any portion thereof; or (ii) engage in activities to develop improvements to the Equipment; (iii) modify the Equipment or integrate them with any other products, systems, devices or other items other than as contemplated at the time of sale; or (iv) allow or assist any third party to perform any of the foregoing.
- (b) **PROPRIETARY INFORMATION STATEMENT:** The Quotation contains information confidential and proprietary to the Company. No part of this information may be reproduced or transmitted in any form without the prior written permission of the Company. The Quotation supersedes all previous quotations and is valid for 90 days from date of issue, unless otherwise stated.

### 18. RETURN OF GOODS

- (a) No return of Goods for purposes of the Product Warranty or where return is otherwise expressly permitted under the Order shall be accepted by Company without a Return Material Authorization ("RMA") number, which may be issued by the Company in its sole discretion, and receipt of a duly completed Purchaser Declaration in the Company's designated format in respect of exposure of the Goods to hazards which is available at [http://www.smithsdetection.com/CA\\_terms\\_conditions.php](http://www.smithsdetection.com/CA_terms_conditions.php). All Goods for return shall be returned freight prepaid in the manner specified in the RMA. If returned Goods are claimed to be defective, a complete description of the nature of the defect must be included with the returned Goods. Goods not eligible for return shall be returned to Purchaser, freight collect.
- (b) The Purchaser agrees to defend, indemnify and hold the Company, its affiliates and its and their respective officers, partners, directors, employees, agents, successors, and assigns harmless from all Losses and threatened Losses arising out of or in connection with the exposure of the product to hazardous materials, regardless of whether or not: (i) the exposure to hazardous materials was caused by or within the control of the Purchaser; (ii) the Company was aware of such exposure; and (iii) any negligence or other fault of the Company contributed to, or is alleged to have contributed to, the Loss, except and only to the extent such Loss was adjudicated to be caused by the wilful misconduct or gross negligence of the Company.
- (c) A 20% restocking fee shall apply to all returned items, in addition to any shipping costs incurred and Company technician expenses if applicable.

### 19. GOVERNING LAW AND JURISDICTION

The Order and these Terms and Conditions of Sale shall be governed by and construed in accordance with the laws of Ontario without reference to its conflicts or choice of laws provisions. Any legal action shall be brought in the exclusive venue of the courts of Toronto, Ontario, Canada. The Company and the Purchaser hereby irrevocably waive the right to a jury trial to the extent permissible by law. **THIS ORDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.** Notwithstanding the foregoing, the national laws of Canada shall be the governing laws, to the extent appropriate, with respect to issues involving patent, copyright, or trademark. The parties to this Agreement have expressly agreed that



## CANADA TERMS AND CONDITIONS OF SALE OF GOODS

these Terms and Conditions and any supporting document be drafted in the English language.

### 20. CHANGES AND TERMINATION

- (a) Company shall have the right, in its sole discretion, to terminate the Order if the Purchaser:
- (i) is unable to pay its debts generally as and when they become due;
  - (ii) is the subject of a legal process declaring it insolvent or a petition is filed, a notice is given, a resolution is passed or an order is made in connection with the winding up of the Purchaser, or an application is made to court, or an order is made for the appointment of an administrator, or a notice of intention to appoint an administrator is given;
  - (iii) suspends, ceases or threatens to cease carrying on all or substantially the whole of its business;
  - (iv) commits any breach of the Order which is (a) incapable of remedy (as reasonably determined by the Company) ; or (b) not remedied within 14 days of the date of the breach.
- (b) On termination of the Order for any reason, the Purchaser shall immediately pay to the Company all of the Company's outstanding unpaid invoices, and in respect of Goods and/or Services supplied for which no invoice has been submitted, the Company shall submit an invoice which shall be payable by the Purchaser immediately on receipt. The accrued rights and remedies of the Company at termination shall not be affected, including the right to claim damages in respect of any breach which existed at or before the date of termination.
- (c) The Purchaser may make a written request for amendment or modification of the Order. If a request for amendment or modification is accepted by the Company, and any changes cause an increase or decrease in the cost of, or the time required for, the performance of any work under the Order an equitable adjustment shall be made in the price or delivery schedule, or both, and the Order shall be modified in writing accordingly. Wherever the cost of property made obsolete as a result of the change is included in the price adjustment, Purchaser shall have the right to prescribe the manner of disposition of such property.
- (d) The Purchaser is not entitled to cancel or terminate the Order without the Company's prior written approval, which shall be entirely at the Company's sole discretion. If Purchaser's written request for termination is accepted by the Company, equitable provision shall be made to the Company for a recoupment of all costs incurred under the Order and for reasonable overhead and profit based on time and costs expended. The Order shall continue in effect until such time as payment is received. A written request as specified herein shall give The Company adequate reason to demand written assurance of Purchaser's ability and intent to carry out the Order.
- (e) If the Purchaser fails to take delivery of the Goods and such failure continues for a period of more than one month beyond the agreed delivery date, the Company may treat such failure as a request of termination of the Order and dispose of the Goods as it sees fit. In such event, the Company shall be entitled to recover all costs incurred under the Order and for reasonable overhead and profit based on time and costs expended.
- (f) If the Order refers to or contains separately priced line items for training and/or other Services, the Purchaser shall forfeit any related advance payment(s), or where no advance payment has been made, be charged a cancellation fee of not less than 30% of the relevant line item price in the event that the Purchaser cancels such Services.

### 21. FORCE MAJEURE

The Company shall not be liable to the Purchaser for any loss or damage arising due to delay or non-performance of its obligations under this Agreement arising from any cause beyond its reasonable control including, without limitation, any of the following: act of God, exceptional adverse weather conditions, flood, lightning or fire (except if the cause of fire originates from the Goods), strike or lockout, terrorist and/or insurgent activity, armed conflict, large scale organized criminal activity, the act or omission of Government or administrative or other competent authority, war, military operations or riot. The Company shall be permitted to suspend its obligations under the Order for the duration of any force majeure event.

### 22. INSTALLATION OF THE GOODS

- (a) Installation and training are not included unless otherwise expressly stated in the Order. Where the Company has agreed to install the Goods, the Purchaser shall at its own cost prepare the site on which the Goods are to be installed in accordance with the specifications furnished by the Company for this purpose and, in accordance with such specifications, provide such equipment (including without limitation, any equipment necessary to unload the Goods) and carry out such works to the site as may be necessary to enable the Company to install the Goods and if it shall fail so to prepare the site and provide such equipment and carry out such works before the agreed delivery date the Purchaser shall indemnify the Company for all costs and charges incurred by the Company (including storage and transportation costs) as a result of such failure.
- (b) When the Goods shall have been installed at the site, tested and shown to be operating to the satisfaction of the Company, the Purchaser shall be deemed to have accepted the Goods unless the Company has been notified to the contrary in writing by the Purchaser within seven days of completion

- of such testing (the "Notice"). The Purchaser shall not give and shall be deemed not to have given the Notice unless the Purchaser has found a substantial defect in the Goods. If the Company is so notified, the Company shall use its reasonable endeavours to remedy any such defect within a reasonable time and the Purchaser shall be deemed to have accepted the Goods within seven days of such defect being remedied.
- (f) Purchaser Delays shall be considered excusable delays for the Company and result in a corresponding automatic extension of any agreed upon time for the performance of the Company's obligations under this Order. The Company shall not be liable to the Purchaser under any circumstances whatsoever for any penalty, damage or loss resulting directly or indirectly from any Purchaser Delays.
- (g) The cost of installation and training purchased is included within the Company's proposal, provided the installation is scheduled within 90 days from the date the unit shipped. This includes one visit to the Purchaser's facility where the installation and training will be conducted during normal business hours Monday through Friday. Installation and training is only included for equipment delivered and installed within Canada.
- (h) **This Installation and Training Section 21(f) only applies to X-Ray equipment. Installation is not included for TRACE products unless otherwise denoted on the Quotation.** The Purchaser must contact the Company's Service Department to confirm receipt of the Equipment to schedule a visit. During this visit, the Company technician will install the X-ray unit (160 Kv or lower), which includes a Radiation Survey and calibration of the equipment as well as train the Purchaser's personnel on the start-up and fail-safe features, basic usage and software features of the equipment purchased. The technician will not engage in any form of image interpretation training.

### 23. SOFTWARE

To the extent that the Goods contain or are software, Company hereby grants to Purchaser a non-exclusive, non-transferable, personal license to use the software and related documentation solely with the Goods. Purchaser's use of the Goods conclusively evidences its acceptance of this license and these Terms and Conditions, including this Section 22. Title to the software shall at all times remain with Company. Purchaser agrees that the software, all enhancements, related documentation, and derivative works are, and will remain, the sole property of the Company and includes valuable trade secrets. Purchaser agrees to treat the software and related documentation as confidential and to not copy, reproduce, sub-license, or otherwise disclose the software and related documentation to third parties. Purchaser agrees to not disassemble, decompile, reverse engineer, create derivative works from, attempt to derive the source code or otherwise translate, customize, localize, modify, add to, or in any way alter, rent, or loan the software or related documentation.

### 24. CEIA METAL DETECTORS

If the Goods sold under these Conditions includes metal detectors manufactured by CEIA the following additional provision applies: To ensure proper operation of the unit, CEIA recommends that the unit be firmly anchored to the floor using screws or silicone. If the unit is not firmly anchored to the floor, it may fall and pose a safety risk and/or its detection capability may be compromised. If the Purchaser requests that the Company not install the unit in accordance with CEIA's recommendations, COMPANY SHALL HAVE NO LIABILITY FOR ANY CLAIMS, COSTS, LOSSES, LIABILITIES AND DAMAGES OF ANY SORT (WHETHER DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR OTHERWISE, AND WHETHER ARISING IN TORT, CONTRACT, WARRANTY, STRICT LIABILITY, RELIANCE OR UNDER ANY OTHER THEORY) RELATING TO THE LACK OF FIRM FIXATION OF THE CEIA UNIT TO THE FLOOR. To the fullest extent permitted by applicable law, Purchaser shall indemnify and hold the Company harmless from and against any and all actual or threatened Losses resulting from the lack of firm fixation of the CEIA unit to the floor.

### 25. X-RAY BODY SCANNER

- (a) Purchaser is hereby notified that the exposure of human beings to x-ray radiation may be harmful. Purchaser acknowledges that the safe operation of the Goods is entirely the Purchaser's responsibility and that the Company shall have no liability relating to the use or operation of the Goods by Purchaser or anybody acting on the Purchaser's behalf. Purchaser undertakes to exercise such care and to adopt and follow such procedures in the use and operation of the Goods as may be necessary to eliminate or minimize the hazards referred to in this Section 25. Without limiting the generality of the foregoing, Purchaser undertakes to use the Goods in full compliance with Company's maintenance procedures and operator manuals, to comply with the requirements of all applicable environmental or occupational health and safety laws, radiation safety laws and industry standards relating to radiation safety for personnel security screening systems using x-rays, and to operate the Goods within the radiation dose limits established by such laws and standards.
- (b) Purchaser is further notified that the use of x-ray Goods on human beings for non-medical purposes may be prohibited in some states or require registration with governmental authorities. Purchaser undertakes to comply with all such prohibitions and registration requirements.
- (c) Purchaser covenants that the use and operation of the Goods by or on behalf of the Purchaser shall comply with all applicable privacy and data protection laws.

**CANADA TERMS AND CONDITIONS OF SALE OF GOODS**

- (d) To the fullest extent permitted by applicable law, Purchaser shall defend, indemnify, and hold harmless Company and its affiliates and their respective officers, partners, directors, employees, agents, successors, and assigns from and against any and all actual or threatened Losses to the extent they arise from any non-compliance with the undertakings in Sections 25 (a) to (c).

**26. COMPLIANCE AND ETHICS**

The Company is an Equal Opportunity Employer and is committed to conducting its business ethically and lawfully. To that end Company, maintains a Code of Business Ethics and mechanisms for reporting unethical or unlawful conduct. Company expects that the Purchaser also will conduct its business ethically and lawfully. Company Code of Business Ethics is available at <https://www.smiths.com/code>.